

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXXXXXXX

File No. 53699-001

Petitioner,

v.

Blue Cross and Blue Shield of Michigan

Respondent.

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Issued and entered
this 19th day of June 2003
by Linda A. Watters
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On April 28, 2003, XXXXXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901, *et. seq.* After a review of the material submitted, the Commissioner accepted the request. The issue involved is medical in nature. The Commissioner therefore assigned the case to an independent review organization (IRO) on May 5, 2003. On May 19, 2003, the IRO provided its recommendation to the Commissioner.

II
FACTUAL BACKGROUND

Petitioner had a bilateral mastectomy for breast cancer diagnosed in XXXX. In XXXX she

began to have discomfort in her right lower ribs. In XXXX a bone scan indicated a suspicious lesion within the right rib area. On XXXXXXXXXXXXXXXX, a positron emission tomography (PET) scan was done to see if it might represent metastatic disease. Blue Cross and Blue Shield of Michigan (BCBSM) denied payment for the PET scan. The Petitioner appealed the decision.

On February 27, 2003, a Managerial-Level Conference upheld the denial. BCBSM issued a final determination on February 28, 2003, denying the scan. The Plan claimed the scan is not covered because it is experimental or investigational.

III ISSUE

Did BCBSM properly deny coverage for coverage of the PET scan in XXXXXXXXXXXX as experimental or investigational?

IV ANALYSIS

Petitioner's Argument

The Petitioner underwent a bilateral mastectomy for breast cancer in XXXX and received chemotherapy. In XXXX she began to experience pain in the right ribs. Bone scans showed some abnormality in the rib area. A rib biopsy did not determine the etiology of the abnormality. When a new bone scan showed further abnormality in the area, the oncologist ordered a PET scan because of the concern that this might represent metastatic disease. The doctor indicated that the PET scan is very sensitive and specific in cases of breast cancer. He did not think any other radiologic study would provide as much helpful information as the PET scan. Petitioner submitted copies of two articles that support the use of this test for breast cancer.

BCBSM's Argument

Petitioner is enrolled as a member of BCBSM governed by the terms of the Comprehensive Health Care Copayment Certificate Series CMM 100. BCBSM denied reimbursement for a PET scan because under the contract experimental or investigational services are not payable. Section

7, The Language of Health Care, explains the terms as follows:

Experimental or Investigational

A service which has not been scientifically demonstrated to be as safe and effective for treatment of the patient's condition as conventional or standard treatment.

Experimental or Investigational Services

We do not pay for experimental or investigational drugs or services. Facility services and physician services, including diagnostic tests which are related to experimental or investigational procedures, are also not payable.

The BCBSM medical director is responsible for determining whether the use of any service is experimental or investigational.

The Plan submitted the medical records for the Petitioner to their Medical Consultant for review. The Medical Consultant indicated that the PET scan is still considered investigational for diagnosis and staging of breast cancer. Therefore, BCBSM maintains the denial for reimbursement is in accordance with the provisions of the Certificate.

IRO Recommendation

The IRO reviewer is board certified in diagnostic radiology and a practicing physician who holds an academic appointment. The IRO indicates the literature supports the use of PET scans for staging and restaging of patients with breast cancer. One study found PET scans could be used to improve prediction of clinical outcome. (Vranjesevic D et al. Whole-Body F-FDG PET and conventional Imaging for Predicting Outcomes in Previously Treated Breast Cancer Patients. Journal of Nuclear Medicine. 43(3): 325-329.) Another article concluded PET scans had been proven accurate in restaging cases of recurrent breast cancer and would likely aid in directing therapy. (Eubank, WB et al. Detection of Locoregional and Distant Recurrences in Breast Cancer Patients by Using FDG PET Radiographics, 2000; 22:5-17.)

In the Petitioner's case the PET scan determined that the rib abnormalities on the right side were most likely post-traumatic. The results averted a second possible biopsy and/or resection and

allowed the physician to properly treat her condition. The testing was medically necessary. The use of the PET scan was appropriate and not considered investigational for this patient.

Commissioner's Review

The Commissioner carefully reviewed the arguments and documents presented by the parties, as well as the findings of the IRO. The Commissioner concurs with the IRO's conclusions that the PET scan was medically necessary and not investigational in this case. It was appropriate in treating the Petitioner's condition. BCBSM's decision to deny reimbursement for this procedure was incorrect.

**V
ORDER**

The Commissioner reverses BCBSM's final adverse determination. BCBSM is required to pay for the PET scan performed on XXXXXXXXXXXXXXXX. BCBSM must make this payment within sixty days and shall provide the Commissioner with proof of payment no later than seven days after it makes that payment.

Under MCL 550.1915, any person aggrieved by this order may seek judicial review no later than sixty days from the date of this order in the circuit court for the county where the covered person resides or the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Linda A. Watters
Commissioner